

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

LARRY HUDSON, JR., §
§
Plaintiff, §
VS. § CIVIL ACTION NO. C-08-254
§
UNIVERSITY OF TEXAS MEDICAL §
BRANCH, *et al.*, §
§
Defendants. §

**MEMORANDUM OPINION AND ORDER DENYING AS UNNECESSARY
MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL AND ORDER TO
CLERK TO DOCKET MOTION AS AN AMENDED NOTICE OF APPEAL**

Final Judgment was entered in this case March 10, 2009 (D.E. 185). Plaintiff timely filed two motions for Rule 59(e) relief (D.E. 186, 188), thus delaying the time for filing his notice of appeal until after the District Court rules on his motions. FED R. APP. P. 4(a)(4). Although recommendations have been entered (D.E. 187, 190), the District Court has not yet ruled on the motions. Nevertheless, plaintiff filed his notice of appeal of the final judgment on May 7, 2010 (D.E. 194). Pending is plaintiff's motion for leave to amend his notice of appeal (D.E. 203).

Undersigned is unaware of any requirement that plaintiff seek leave of court to file an amended notice of appeal. Leave of court is required only when plaintiff seeks an extension of time to file his notice of appeal, FED R. APP. P. 4(a)(5), or when he seeks to reopen the time to file an appeal. FED R. APP. P. 4(a)(6). Since the time for filing a notice of appeal will not even begin to run until the District Court rules on the Rule 59(e)

motions, there is no need to consider plaintiff's motion as a request for an extension of time. Plaintiff's motion (D.E. 203) is denied as unnecessary.

The Clerk is ordered to docket plaintiff's motion (D.E. 203) as an amended notice of appeal and to forward it to the Court of Appeals.¹

ORDERED this 2nd day of June, 2010.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

¹ Undersigned notes that plaintiff is attempting to appeal recommendations to the District Court. Recommendations of the Magistrate Judge to the District Court are not ripe for appeal to the Fifth Circuit. *Trufant v. Autocon, Inc.*, 729 F.2d 308, 309 (5th Cir. 1984).